



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0019]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This notice provides NHTSA's finding that a non-availability waiver of the Buy America requirements is appropriate for the purchase of consumer-use motorcycle helmets by the Florida Department of Transportation (FDOT), using Federal grant funds. NHTSA has determined that a waiver is appropriate because there are no suitable motorcycle helmets produced in the United States that are designed for consumer-use.

DATES: The effective date of this waiver is **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.

- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

FOR FURTHER INFORMATION CONTACT:

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is appropriate for the Florida Department of Transportation (FDOT) to purchase approximately 239 consumer-use motorcycle helmets, using grant funds authorized under 23 U.S.C. 402 (section 402) and 23 U.S.C. 403 (section 403).¹ Section 402 funds are available for use by State Highway Safety Programs that, among other things, aim to reduce injuries and deaths resulting from motorcycle accidents. 23 U.S.C. 402(a). Section 403 funds are available

¹ In October 2014, FDOT submitted a request to waive Buy America for the purchase of motorcycle helmets using section 403 funds only. This notice responds to a January 2015 waiver request that superseded the October 2014 request and seeks a waiver to use both sections 402 and 403 funds.

for use by State Highway Safety Research and Development Activities including research of motorcyclist characteristics and safety. 23 U.S.C. 403. The Buy America provision states that NHTSA “shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b). In this instance, NHTSA has determined that a waiver is appropriate for the purchase of the consumer-use motorcycle helmets because there is no sufficient product produced domestically that meets the need identified by FDOT.

FDOT seeks a waiver to purchase motorcycle helmets for use by its program called “The Demonstration to Promote Motorcycle Helmet Use,” and other motorcycle safety education and injury prevention programs. FDOT requests to purchase a maximum of 150 helmets using Section 403 funds and 85 helmets using Section 402 funds at a per unit cost of \$100 to \$150. FDOT also plans to purchase 4 consumer-use helmets for law enforcement officers using Section 402 funds at an estimated cost of \$300 each. Although the State of Florida does not require motorcyclists to wear a helmet, Florida aims to increase helmet use through alternate efforts, such as raffles for helmets and exchanges that allow motorcyclists to receive DOT-compliant helmets for trading in non-DOT-compliant helmets. FDOT seeks to use Federal grant funds to purchase motorcycle helmets for use during these outreach activities at motorcycle rallies and

events. FDOT will use the motorcycle helmets to encourage participation in its helmet safety education programs, focus groups, and surveys at these events. FDOT states that its proposed helmet drawings and exchange program will incentivize the use of helmets within the segment of the motorcycle rider community that is suspicious of the safety benefits of helmet use. FDOT also seeks to use Federal grant funds to purchase 2 helmets for use by law enforcement officers on the Florida State University Police Department motorsports team to promote motorcycle safety and discourage illegal street racing and 2 helmets for use by law enforcement officers to blend in with other motorcyclists during law enforcement activities.

FDOT seeks to use these motorcycle helmets for its program because they are designed specifically for consumers. FDOT believes that using these motorcycle helmets as an incentive should encourage and increase the use of helmets within the motorcycling community. Florida is unable to identify, however, any motorcycle helmets that meet the Buy America requirements. FDOT conducted phone calls and web searches but was unable to find an American made motorcycle helmet.

NHTSA is aware of only one brand of consumer-use motorcycle helmet that is produced in the United States: Super Seer Corporation (Seer), a Colorado-based custom motorcycle helmet manufacturer. Seer primarily produces helmets for law enforcement. It also makes one model (Seer Touring Helmet) for public use. The Seer helmet is not offered to the general public through retail outlets. These custom motorcycle helmets are not mass produced, rather they are hand-made to order.² Consumers may purchase a custom helmet through Seer's Internet website. Although these helmets are made in the United States, NHTSA believes they are not produced in sufficient and reasonably available quantities for FDOT's purposes. NHTSA is not aware of any other motorcycle helmets produced in the United States. Though there are other

² The custom-made Seer touring helmet is much more expensive than other helmets that are sold in stores.

American-based companies in this business, they manufacture their motorcycle helmets overseas. NHTSA assessed approximately forty motorcycle helmet brands and manufacturers, including HJC, Bell, and MHR. NHTSA found that all the companies produce their helmets overseas, in locations such as China, Taiwan, and Italy. Since consumer-use motorcycle helmets are unavailable from an American manufacturer in reasonably available quantities, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to FDOT in order to purchase approximately 239 consumer-use motorcycle helmets. This non-availability waiver applies to Florida and all other States seeking to use section 402 and section 403 funds to purchase motorcycle helmets for the purposes mentioned herein. The waiver will continue through fiscal year 2015 and will allow the purchase of off-the-shelf consumer motorcycle helmets required for Florida's demonstration motorcycle helmet program and other motorcycle safety and research programs. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate. Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider these findings, if through comment, it learns of and can confirm the existence of a comparable domestically made product to the items granted a waiver.

These findings should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110-161.

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Acting Chief Counsel

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